

Message Text

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22-12

ACTION L-03

INFO OCT-01 NEA-10 ISO-00 FBOE-00 A-01 JUSE-00 /015 W

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P 180828Z NOV 76

FM AMEMBASSY KUWAIT

TO SECSTATE WASHDC PRIORITY 6662

UNCLAS KUWAIT 5401

PASS JUSTICE, ATTN: CIVIL DIVISION

E.O. 11652: N/A

TAGS: ACLM, ABLD, AFSP

SUBJ: EMBASSY RECEIVES SUMMONS TO APPEAR IN LOCAL COURT IN
RENT CASE

REF: 2 FAM 284

1. AT 1600 LOCAL TIME NOV 17, EMBASSY RECEIVED A SUMMONS BY
REGISTERED LETTER FROM LOCAL COURT OF FIRST INSTANCE-RENTS
REQUIRING ADMIN OFFICER TO APPEAR IN COURT ON NOV 18 FOR THE
HEARING OF A CASE, BEING BROUGHT BY AN EMBASSY LANDLOARD,
BADER ABDULLAH AL-MULLA (S-641-FBO-6 AND 7).

2. BOTH LEASES 6 AND 7 ARE LONG TERM LEASES ENTERED INTO ON
JUNE 10, 1964 FOR A PERIOD OF TEN YEARS WITH FIVE TWO-YEAR
OPTIONS FOR RENEWAL AT SAME TERMS AND CONDITIONS. IN APRIL
1976 EMBASSY ATTEMPTED TO EXERCISE THE SECOND OF THESE OPTIONS.
LANDLOARD REFUSED TO SIGN LEASE AMENDMENT AND REFUSED RENT
CHECKS. BOTH RENT CHECKS WERE DEPOSITED WITH LOCAL RENTAL
COURT ON OUR BEHALF BY A LOCAL LAW FIRM. THIS IS STANDARD
PRACTICE HERE. WHILE SUMMONS DOES NOT SAY ANYTHING ABOUT
SUBSTANCE OF CASE, WE ARE CERTAIN IT INVOLVES ATTEMPT TO GET
RENT INCREASE. AS DEPT AWARE, RENTS HAVE INCREASED ASTRO-
NOMICALLY IN RECENT YEARS. OUR RENT ON PROPERTY IN QUESTION
IS NOW DOL 590/MO. PRESENT MARKET VALUE WOULD BE ABOUT 2430/MO.

3. SUMMONS WAS DELIVERED TO THE DOOR OF THE PROPERTY IN DISPUTE
ON NOV 11. THERE BEING NO ONE HOME, IT WAS TAKEN TO THE
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"MUKHTAR" OR ADMINISTRATION HEAD OF THE NEIGHBORHOOD. REGISTERED

LETTER MAILED ON NOV 14 CONTAINING SUMMONS REACHED US ONLY ON THE 17TH. OUR ATTORNEY SAYS THIS IS AN ACCEPTABLE PROCEDURE UNDER LOCAL LAW. SUMMONS, ADDRESSED TO A "JOSS P. BLISS" (TRANSLITERATION FROM ARABIC), ADMINISTRATIVE OFFICER, AMERICAN EMBASSY. WE HAVE NO RECORD OF ANY SUCH PERSON EVER HAVING SERVED HERE, BUT ASSUME THIS WOULD NOT ALTER THE VALIDITY OF THE SUMMONS.

4. AFTER ANALYSIS OF SITUATION, OUR ATTORNEY HAS ADVISED US THAT IN COURT OF FIRST INSTANCE, FAILURE TO ANSWER INITIAL SUMMONS WILL ONLY RESULT IN SECOND SUMMONS BEING ISSUED. WHEN THIS OCCURS, OUR ATTORNEY WILL ARGUE THAT SUMMONS WAS IMPROPERLY SERVED, SINCE IT SHOULD HAVE BEEN SENT TO FOREIGN MINISTRY FOR TRANSMISSION TO US. WE HAVE RETURNED THE SUMMONS TO THE JUSTICE MINISTRY (OF WHICH COURTS ARE AN INTEGRAL PART) TELLING THEM THAT WE CANNOT ACCEPT IT EXCEPT THROUGH THE FOREIGN MINISTRY BY DIPLOMATIC NOTE. FYI: MFA PERIODICALLY INSTRUCTS FOREIGN MISSIONS NOT TO DEAL DIRECTLY WITH OTHER KUWAITI OFFICES AND MINISTRIES.

5. IN CONVERSATION WITH LOCAL ATTORNEY LAST WEEK (WHEN THE POSSIBILITY OF USG'S BEING SUMMONED WAS ENTIRELY ACADEMIC) ADMIN OFFICER WAS TOLD THAT LOCAL LAW HAS NO PROVISION EXEMPTING DIPLOMATIC MISSIONS FROM SUCH CIVIL COURT ACTIONS. NOR, UNDER LOCAL LAW, CAN COUNSEL MAKE A SPECIAL APPEARANCE, THAT IS TO PLEAD THAT COURT LACKS JURISDICTION. THEREFORE, ATTEMPT BY OUR ATTORNEY TO MAKE CASE OF SOVERIGN IMMUNITY WOULD NOT SEEM TO BE A FRUITFUL COURSE. IF THIS CASE IS TO BE MADE, IT WOULD PROBABLY HAVE TO BE THROUGH DIPLOMATIC CHANNELS. WE SEE NO FOREIGN POLICY OBJECTIONS TO THIS APPROACH IF THE DEPARTMENT AUTHORIZES US TO PURSUE IT.

6. EVEN THOUGH WE APPARENTLY HAVE A VALID LEASE, WITH OPTIONS TO RENEW UNTIL 1984, THE COURT COULD STILL RULE FOR LANDLORD. IN LOCAL PRACTICE, THERE EXISTS JUDICIAL DISCRETION TO ALTER OR SET ASIDE AGREEMENTS WHICH ARE DEEMED UNREASONABLE, EVEN THOUGH SIGNED BY BOTH PARTIES IN GOOD FAITH.

7. WOULD APPRECIATE DEPARTMENT'S GUIDANCE ON APPROACH TO TAKE IN THIS CASE. IF DEPARTMENT DOES NOT RECOMMEND SOVERIGN UNCLASSIFIED

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IMMUNITY APPROACH, EITHER THROUGH DIPLOMATIC CHANNELS OR IN LOCAL COURT, WE WILL THEN GO INTO COURT WITH THE DISTINCT POSSIBILITY THAT WE MAY LOSE, IF NOT THIS TIME, THEN THE NEXT. IF WE SHOULD LOSE, A DANGEROUS PRECEDENT MAY BE SET, FOR THE LEASE ON THE EMBASSY COMPOUND IS ALSO IN DISPUTE. THAT LANDLORD, THE AMIR OF BAHRAIN, THROUGH HIS AGENT, HAS REFUSED TO SIGN THE RENEWAL AMENDMENT AND THAT RENT IS ALSO DEPOSITED WITH COURT. AT CURRENT MARKET VALUE, INCOME FROM EMBASSY

COMPOUND PROPERTY, IF PROPERLY DEVELOPED, COULD BE IN AREA OF ONE MILLION DOLLARS PER ANNUM. THE RENT UNDER THE CURRENT LEASE IS LESS THAN ONE-TENTH THAT AMOUNT.

8. WOULD ALSO APPRECIATE BEING INFORMED OF WHAT WOULD BE PRACTICE IN UNITED STATES IF DIPLOMATIC MISSION WERE SUED BY LANDLORD, OR IF OTHER CIVIL ACTION WERE BROUGHT. DOES FEDERAL STATUTE EXEMPT FOREIGN GOVERNMENTS FROM ANY AND ALL PROCESS IN U.S. COURTS?
MAESTRONE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 18 NOV 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976KUWAIT05401
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760430-0111
From: KUWAIT
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19761137/aaaabfdj.tel
Line Count: 125
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION L
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: powellba
Review Comment: n/a
Review Content Flags:
Review Date: 04 AUG 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <04 AUG 2004 by vandyklc>; APPROVED <23 NOV 2004 by powellba>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: EMBASSY RECEIVES SUMMONS TO APPEAR IN LOCAL COURT IN RENT CASE
TAGS: ACLM, ABLD, AFSP
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006